

United States
Department of the Interior
Bureau of Land Management

Miles City Field Office

Western Energy Company
Lease Readjustment

Categorical Exclusion (CX)
DOI-BLM-MT-C020-2013-0106-CX

For Further Information Please Contact:

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BLM



UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

CATEGORICAL EXCLUSION (CX) REVIEW AND APPROVAL

A. Background:

BLM Office: Miles City Field Office.

Lease/Serial/Case File Nos.: MTM 035734

Western Energy Company
Readjustment

NEPA Number (if applicable)

DOI-BLM-MT-C020-2013-0106-CX

Proposed Action Title/Type: Lease Readjustment of one (1) federal coal lease (above)

The lease readjustment process is an opportunity for BLM to review leases that have eclipsed their primary or subsequent renewal term of ten (10) years and that may be held by ongoing production or logical mining unit. The Proposed Action is administrative in nature and is primarily an opportunity to readjust royalty rates on one (1) existing coal lease. BLM also takes this opportunity to review the subject lands to determine if there are any resource-based or environmental issues which need to be addressed via adding or modifying stipulations to the coal lease. However for this coal lease there are no issues which need to be addressed because the leases are located within existing mine permit boundaries and on lands that have already been disturbed. As such, resource issues have been thoroughly addressed at the mine permit level NEPA analysis or perhaps the previous leasing level analysis – thus rationale for the Categorical Exclusion (CX) for lease readjustment. If resource concerns are noted they would be reviewed with the mine permitting agency (Montana Dept. of Environmental Quality) and a stipulation added to the lease as appropriate or necessary. Coal lease MTM 035734 was initially leased on August 1, 1979.

1. At the end of this CX is Attachment A containing a copy of the December 19, 2001 recommendations (i.e., *Exhibit A*) that was included in the terms to lease MTM 035734 when it was readjusted in 2003. It is recommended that the readjustment terms for the lease herein include the same specific stipulations currently attached to the lease as well as those described in attachment A.

Location of Proposed Action (include county):

- MTM 035734

Lands currently contained in the subject lease are described as:

- T. 1 N., R. 41 E., P.M.M.

- Section 10: N½, N½S½

All in Rosebud County, Montana, totaling: 480.00 acres, more or less

Description of Proposed Action: Readjust terms and conditions of one federal coal lease.

B. Land Use Plan Conformance:

Land Use Plan (LUP) Name:

Final Resource Management Plan / Environmental Impact Statement for the Powder River Resource Area, Miles City District.

Date: December 1984. Last Updated: April 2000.

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s):

Not applicable.

The proposed action is in conformance with the LUP, even though it is not specifically provided for, because it is clearly consistent with the following LUP decision(s) (objectives, terms, and conditions):

The 'original' subject lease(s) had been previously issued and were in effect at the time of preparation and the Record of Decision (ROD) for the 1984 Powder River RMP and the subsequent 1992 ROD for Coal Suitability Re-designations Amendments. The Decision to approve the Proposed Plan as presented in the Final RMP/EIS was signed March 15, 1985.

- On Page 9, Reasons For The Decision, paragraph 3 (Coal), the 1992 ROD states: *"The coal portion of the proposed plan (Alternative B in the RMP/EIS) was preferred because it provided a wide selection of potential sites for coal leasing consideration while removing and protecting areas with substantial multiple use conflicts."*
- Furthermore, the ROD states on page 11, Alternative B (Multiple Use), Coal: *"Future development would come from current leases covering 39,391 acres (3.43 billion tons), those unleased areas determined acceptable for further consideration in the 1979 MFP Update and 1982 Amendment covering 911,700 acres (7.83 billion tons) and unleased areas determined acceptable for further consideration from new planning covering 869,000 acres (54.37 billion tons)."*

C: Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA), Handbook H-1790-1 (January 2008) in accordance with Appendix 4, BLM Categorical Exclusions (i.e., 516 DM 11.9):

- *"F. Solid Minerals. 2. Approval of mineral lease readjustments, renewals and transfers including assignments and subleases."*

This Categorical Exclusion is appropriate in this situation because there are no extraordinary circumstances pursuant to National Environmental Policy Act (NEPA), Handbook H-1790-1 (January 2008), "Appendix 5, Categorical Exclusions: Extraordinary Circumstances" potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and, as documented below, none of the extraordinary circumstances described in 516 DM 2, "Appendix 2, Categorical Exclusions, Extraordinary Circumstances" apply.

<u>Extraordinary Circumstances</u>		
The project would:		
1. Have significant impacts on public health or safety.		
Yes	No X NLA 3/7/13	<p>Rationale: <i>Explain why the project would not have significant impacts on public health and safety by describing how the action is designed or planned to keep impacts to a minimum and not impair public health or safety.</i></p> <p>This lease has been in existence for 30+ years and mining has occurred on all or portions of the leased parcels; and nearby associated mining by the lessee is ongoing. Mining-related disturbances have been analyzed through a variety of EAs, EIS's, previous re-adjustment reviews, and other documents and it is assumed that all of the above issues either do not exist or have been mitigated through the mine permitting process. Readjustment of the lease does not represent approval to mine the subject lands. The mine sites and the subject leases are restricted and mining is highly regulated and inspected by the Montana Dept. of Environmental Quality (MDEQ) and the USA Office of Surface Mining (OSM) to ensure that significant impacts to public health and safety do not occur.</p>
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.		
Yes	No X NLA 3/7/13	<p>Rationale: <i>Identify if any of the above concerns are present in the impact area. Demonstrate how impacts would or would not be significant. Specify Areas of Critical Environmental Concern, Wilderness Study Areas, Monuments, and other areas with special designation. BLM shall determine whether a proposed action will occur in a floodplain or wetland area. If an action would significantly impact a floodplain or wetland area, this extraordinary circumstance would apply and alternatives must be considered.</i></p> <p>This lease has been in existence for 30+ years and mining has occurred on all or portions of the leased parcels; and nearby associated mining by the lessee is ongoing. Mining-related disturbances have been analyzed through a variety of EAs, EIS's, previous re-adjustment reviews, and other documents and it assumed that all of the above issues either do not exist or have been mitigated through the mine permitting process. Readjustment of the lease does not represent approval to mine the subject lands. The mine sites and the subject leases are restricted and mining is highly regulated and inspected by the Montana Dept. of Environmental Quality (MDEQ) and the USA Office of Surface Mining (OSM).</p>
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102 (2) (E)].		

	<p><i>WH</i> 3/11/2013</p>	<p>Permit Boundary would have been assessed against mine level disturbance at the time the original lease was issued. Consequently, any sites within the lease tract would have been analyzed for impacts to their eligibility and eligible sites mitigated. No new sites would be impacted or affected by the proposed undertaking of this Lease Readjustment. Eligible sites within the Mine Permit Boundary would have been mitigated per OSM and DEQ directions.</p> <p>BLM has determined readjusting the lease would have no effect to historic properties and the additional lease stipulations would be sufficient to deal with potential impacts to unanticipated discoveries of cultural materials. A determination of <i>No Historic Properties Affected</i> has been reached and entered into the BLM MCFO records. The proposed action would not have an effect on cultural resources that are listed on or are eligible for listing on the National Register of Historic Places. No additional cultural resource work is recommended subject to the lease terms of the proposed readjusted leases (BLM Cultural Resources Report #: MT-020-13-131).</p>
8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.		
Yes	<p>No</p> <p>X</p>	<p>Rationale: This area does not provide habitat for T&E species</p> <p>BJB, 3/22/13</p>
9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.		
Yes	<p>No</p> <p>NLA 3/26/13</p>	<p>Rationale:</p> <p>Readjusting the subject coal leases does not violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment. The leases have been in existence for +30 years and mining has occurred on all or portions of the leased parcels; and nearby associated mining by the lessee is ongoing. Mining-related disturbances have been analyzed through a variety of EAs, EIS's, previous re-adjustment reviews, and other documents. WECO's documentation filed in support of their Readjustment of the leases does not represent approval to mine the subject lands. The mine site and the subject leases are restricted and mining is permitted and highly regulated and inspected by the Montana Dept. of Environmental Quality (MDEQ) and the USA Office of Surface Mining (OSM).</p> <p>The Migratory Bird Treaty Act (MBTA) prohibits the take, capture or kill of any migratory bird, any part, nest or eggs of any such bird (16 U.S.C 703 (a)). NEPA analysis pursuant to Executive Order 13186, requires the Bureau to ensure that MBTA compliance and the effects of Bureau actions and agency plans on migratory birds are evaluated, should reduce take of</p>

		<p>migratory birds and contribute to their conservation.</p> <p>A diversity of breeding birds have been documented in the permit area. (WECO, 2009) Two species documented, Brewer's sparrow and Loggerhead shrike, are a BLM "special status species". Songbird nest densities are not available for the permit area, and little information exists regionally. According to USGS research utilizing 17 common species, a range of 61 to 144 "breeding pairs" were documented per 100 ha (247.1 acres) utilizing the "great plains roughlands" area in separate CRP habitats. (http://www.npwrc.usgs.gov/resource/birds/glbuse/tables.htm#table1) If every breeding pair initiated a nest, this would equate to 1.7 to 4 acres/nest. Although CRP habitat is expected to be somewhat different than habitat in the permit area, similar nest densities are probable in the permit area.</p> <p>WECO acknowledges "migratory birds may be adversely affected at the Rosebud Mine by soil salvage operations during the primary nesting season (mid April through mid June)." (WECO, 2012) WECO implements some measures to minimize the potential for "take" of migratory birds, including tree and some shrub removal prior to the primary nesting season. WECO also minimizes long term impacts to migratory birds by reclamation of habitat for future nesting. Bird nests could likely be destroyed by operations; however, regional populations of birds would not likely be impacted by this action.</p> <p>Raptor nests are surveyed annually, and preventative measures are taken to avoid take of raptor species, such as destruction of nests prior to nesting season. (WECO, pers. com) BJB 3/25/13</p>
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		
Yes	<p>No</p> <p>NLA 3/7/2013</p>	<p>Rationale: <i>State whether such populations are present and whether they would receive disproportionately high and adverse human health or environmental effects. State whether health or environmental statutes would be compromised. The Environmental Protection Agency has developed guidance on addressing environmental justice issues (www.epa.gov).</i></p> <p>Readjusting the subject coal lease does not have a disproportionately high and adverse effect on low income or minority populations. The lease has been in existence for 49+ years and mining has occurred on all or portions of the leased parcels; and nearby associated mining by the lessee is ongoing. Mining-related disturbances have been analyzed through a variety of EAs, EIS's, previous re-adjustment reviews, and other documents and it assumed that all of the above issues either do not exist or have been mitigated through the mine permitting process. Some EIS's and</p>

		<p>has been in existence for 49+ years and mining has occurred on all or portions of the leased parcels; and nearby associated mining by the lessee is ongoing. Mining-related disturbances have been analyzed through a variety of EAs, EIS's, previous re-adjustment reviews, and other documents and it is assumed that all of the above issues either do not exist or have been mitigated through the mine permitting process. Readjustment of the leases does not represent approval to mine the subject lands. The mine sites and the subject leases are restricted and mining is highly regulated and inspected by the Montana Dept. of Environmental Quality (MDEQ) and the USA Office of Surface Mining (OSM). The mine is required to comply with noxious weed control programs within the mine permit boundary.</p>
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Environmental Coordinator

3/29/2013
Date

I considered the Proposed Action of readjusting the terms and conditions of the subject coal leases and have determined that the Action does not cause any significant impacts. In regards to migratory birds, the analysis has illustrated the proposed action will not negatively affect migratory bird populations. Additionally, the proposed action is in conformance with WO IB 2010-120, which implements the Memorandum of Understanding between the BLM and FWS to Promote the Conservation of Migratory Birds. Therefore, use of this CX is appropriate and it is decided to implement this action.

Remarks: Therefore, each of above referenced coal leases shall be readjusted to include:

- i. Attachment A, "EXHIBIT A, COAL LEASE SPECIAL STIPULATIONS" would continue to be included with the readjusted lease terms for each lease listed and described above under Location of Proposed Action.



D: Signature

Authorizing Official: _____ Date: 4/03/2013
(Signature)

Name: Todd D. Yeager

Title: Field Manager, Miles City Field Office

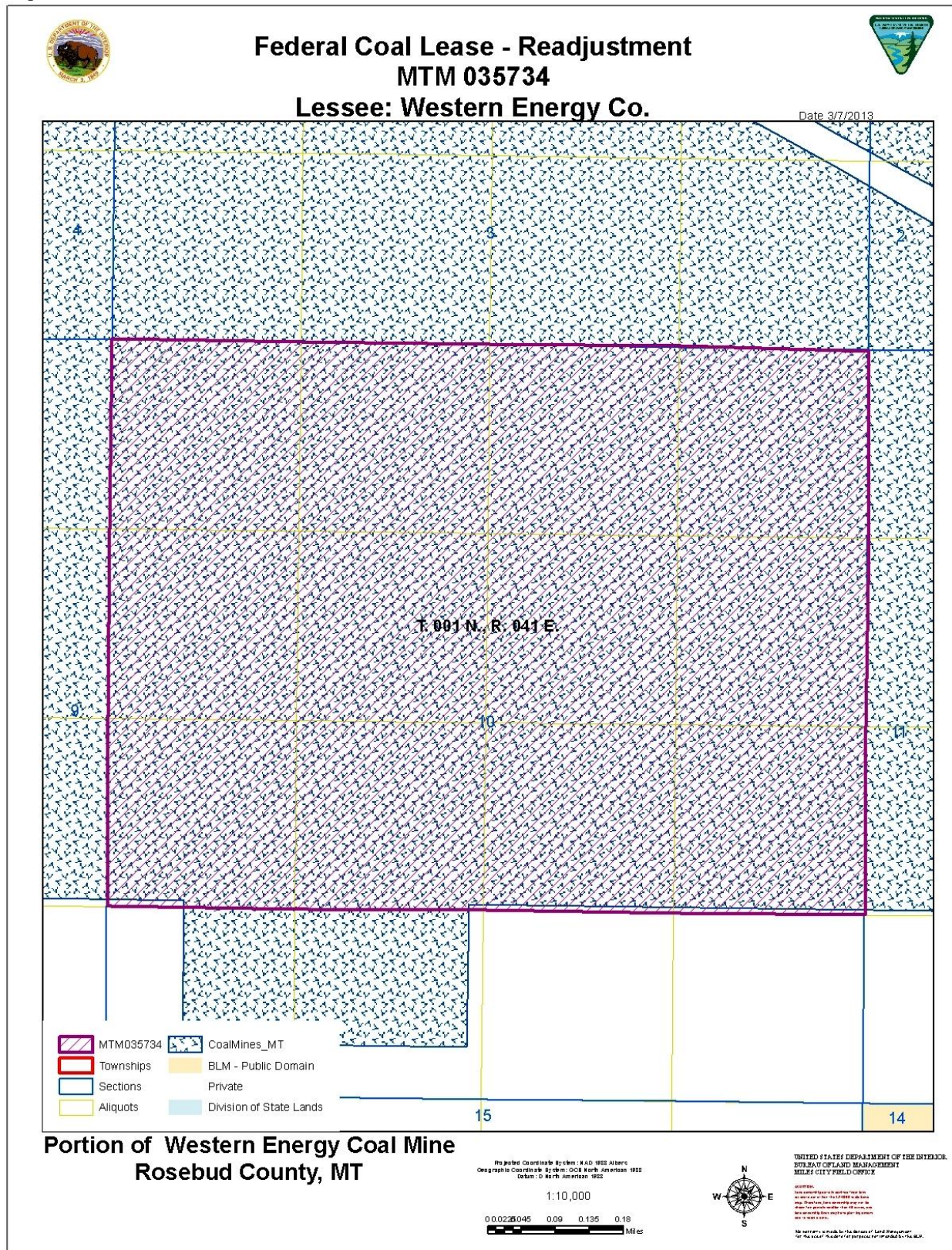
Contact Person

For additional information concerning this CX review and decision, contact:

Nate Arave
Solid Minerals Geologist
Bureau of Land Management
Miles City Field Office
111 Garryowen Road
Miles, City, Montana 59301

Telephone: 406-233-3163

Map 1



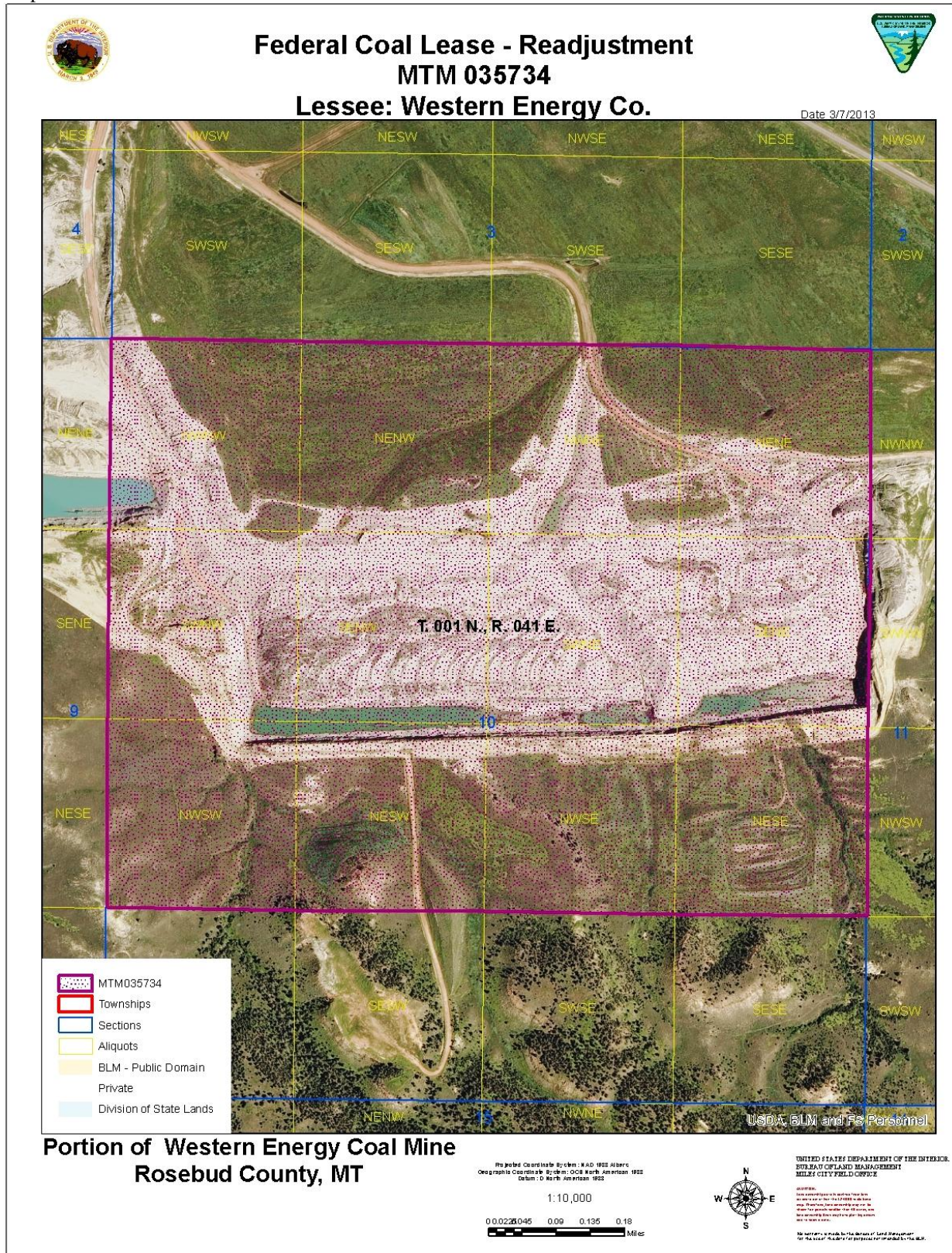


EXHIBIT A

COAL LEASE SPECIAL STIPULATIONS

Sec. 15. SPECIAL STIPULATIONS - In addition to observing the general obligations and standards of performance set out in the current regulations, the lessee shall comply with and be bound by the following stipulations. These stipulations are also imposed upon the lessee's agents and employees. The failure or refusal of any of these persons to comply with these stipulations shall be deemed a failure of the lessee to comply with the terms of the lease. The lessee shall require his agents, contractors and subcontractors involved in activities concerning this lease to include these stipulations in the contracts between and among them. These stipulations may be revised or amended, in writing, by the mutual consent of the lessor and the lessee at any time to adjust to changed conditions or to correct an oversight.

(a) CULTURAL RESOURCES -

(1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall conduct a cultural resource intensive field inventory in a manner specified by the Authorized Officer of the BLM (hereinafter referred to as the Authorized Officer) on portions of the mine plan area, or exploration plan area, that may be adversely affected by lease-related activities and which were not previously inventoried at such a level of intensity. Cultural resources are defined as a broad, general term meaning any cultural property or any traditional lifeway value, as defined below:

Cultural property: a definite location of past human activity, occupation, or use identifiable through field inventory (survey), historical documentation, or oral evidence. The term includes archaeological, historic, or architectural sites, structure, or places with important public and scientific uses, and may include traditional cultural or religious importance to specified social and/or cultural groups. Cultural properties are concrete, material places, and things that are classified, ranked, and managed through the system of inventory, evaluation, planning, protection, and utilization.

Traditional lifeway value: the quality of being useful in or important to the maintenance of a specified social and/or cultural group's traditional systems of (a) religious belief, (b) cultural practice, or (c) social interaction, not closely identified with definite locations. Another group's shared values are abstract, nonmaterial, ascribed ideas that one cannot know about without being told. Traditional lifeway values are taken into account through public participation during planning and environmental analysis.

The cultural resources inventory shall be conducted by a qualified professional cultural resource specialist; i.e., archaeologist, anthropologist, historian, or historical architect, as appropriate and necessary, and approved by the Authorized Officer (BLM if the surface is privately owned). A report of the inventory and recommendations for protection of any cultural resources identified shall be submitted to the Assistant Director of the Western Support Center of the Office of Surface Mining (hereinafter referred to as the Assistant Director) by the Authorized Officer. Prior to any on-the-ground cultural resource inventory, the selected professional cultural resource specialist shall consult with the BLM, the Northern Cheyenne Cultural Protection Board, and the Crow Historic and Cultural Committee. The purpose of this consultation will be to guide the work to be performed and

EXHIBIT A

COAL LEASE SPECIAL STIPULATIONS

to identify cultural properties or traditional lifeway values within the immediate and surrounding mine plan area. The lessee shall undertake measures, in accordance with instructions from the Assistant Director to protect cultural resources on the leased lands. The lessee shall not commence the surface-disturbing activities until permission to proceed is given by the Assistant Director in consultation with the Authorized Officer.

(2) The lessee shall protect all cultural resource properties within the lease area from lease related activities until the cultural resource mitigation measures can be implemented as part of an approved mining and reclamation plan or exploration plan.

(3) The cost of carrying out the approved site mitigation measures shall be borne by the lessee.

(4) If cultural resources are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the Assistant Director, or the Authorized Officer if the Assistant Director is not available. The lessee shall not disturb such resources except as may be subsequently authorized by the Assistant Director. Within two (2) working days of notification, the Assistant Director will evaluate or have evaluated any cultural resources discovered and will determine if any action may be required to protect or preserve such discoveries. The cost of data recovery for cultural resources discovered during lease operations shall be borne by the surface managing agency unless otherwise specified by the Authorized Officer.

(5) All cultural resources shall remain under the jurisdiction of the United States until ownership is determined under applicable law.

(b) PALEONTOLOGICAL RESOURCES -

If a paleontological resource, either large and conspicuous, and/or of significant scientific value is discovered during construction, the find will be reported to the authorized officer immediately. Construction will be suspended within 250 feet of said find. An evaluation of the paleontological discovery will be made by a BLM approved professional paleontologist within five (5) working days, weather permitting, to determine the appropriate action(s) to prevent the potential loss of any significant paleontological value. Operations within 250 feet of such discovery will not be resumed until written authorization to proceed is issued by the Authorized Officer. The lessee will bear the cost of any required paleontological appraisals, surface collection of fossils, or salvage of any large conspicuous fossils of significant interest discovered during the operation.

(c) PUBLIC LAND SURVEY PROTECTION -

The lessee will protect all survey monuments, witness corners, reference monuments, and bearing trees against destruction, obliteration, or damage during operations on the lease areas. If any monuments, corners or accessories are destroyed, obliterated or damaged by this operation, the lessee will hire an appropriate county surveyor or registered land surveyor to reestablish or restore the monuments, corners, or accessories at the same locations, using surveying procedures in accordance with the "Manual of Surveying Instructions for the Survey of Public Lands of the United States." The survey will be recorded in the appropriate county records, with a copy sent to the authorized officer.

EXHIBIT A

COAL LEASE SPECIAL STIPULATIONS

(d) RESOURCE RECOVERY AND PROTECTION PLAN (R2P2) -

Notwithstanding the approval of a resource recovery and protection plan (R2P2) by the BLM, lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery (MER) [as defined at 43 CFR 3480.0-5.2(21)] of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecovered coal.

The parties recognize that under an approved R2P2, conditions may require a modification by the operator/lessee of that plan. In the event a coal bed or portion thereof is not to be mined or is rendered unmineable by the operation, the operator shall submit appropriate justification to obtain approval by the authorized officer to leave such reserves unmined. Upon approval by the authorized officer, such coal beds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/lessee from exercising its right to relinquish all or a portion of the lease as authorized by statute and regulation.

In the event the authorized officer determines that the R2P2 as approved will not attain MER as the result of changed conditions, the authorized officer will give proper notice to the operator/lessee as required under applicable regulations. The authorized officer will order a modification if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserves left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the authorized officer that the coal reserves have been rendered unmineable or at such time that the lessee has demonstrated an unwillingness to extract the coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the MMS demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

(e) MULTIPLE MINERAL DEVELOPMENT -

Operations will not be approved which, in the opinion of the authorized officer, would unreasonably interfere with the orderly development and/or production from a valid existing mineral lease issued prior to this one for the same lands.

The BLM realizes that coal mining operations conducted on Federal coal leases issued within producing oil and gas fields may interfere with the economic recovery of oil and gas; just as Federal oil and gas leases issued in a Federal coal lease area may inhibit coal recovery. BLM retains the authority to alter and/or modify the R2P2 for coal operations on those lands covered by Federal mineral leases so as to obtain maximum resource recovery.